IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M. JOSEPH

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 20737 of 2007(R)

PETITIONER:

A.I. THOMAS, ANTHIKKADAN HOUSE,
KUTTOOR P.O., THRISSUR.

BY ADV. SRI. B.S. SWATHI KUMAR

RESPONDENT:

REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 20737 OF 2007

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Dated this the 17th day of July, 2007

JUDGMENT

Petitioner challenges Ext.P3. He seeks a direction to the respondent to consider and dispose of Ext.P4 and declare that he is legally entitled to continue as the Chairman of Thrissur Circle Co-operative Union for the entire term he has been elected.

2. The facts are not in dispute. Petitioner was elected as the member of the managing committee of the Thrissur Service Co-op Bank on 14/03/2004. On 16/01/2006 an administrative committee has taken charge apparently acting under Section 33 of the Co-operative Societies Act. Prior to that, on 26/06/2004 petitioner was elected as the member of the Thrissur Circle Co-operative Union. On 15/06/2005 petitioner came to be appointed as the Chairman of the Thrissur Circle Co-operative Union. Ext.P3 is challenged by the petitioner. Ext.P3 is issued on behalf of the Registrar on 12/06/2007, wherein it is stated that in terms of Rule 143(2) petitioner has ceased to be the member on

16/01/2006 as the administrative committee has taken charge on the said day. It is further stated that though he was elected as the member of the Bank, he ought to have been elected under Rule 128(1). It is further stated that in terms of the disqualification to continue, there be a gazette publication to the effect that petitioner is not eligible to continue as the member of the Thrissur Circle Co-operative Union.

3. I heard learned counsel for the petitioner and the learned Government Pleader also.

4. Counsel for the petitioner broadly raised two complaints against Ext.P3 order. He would contend that it is an order which has adverse civil consequences and petitioner should have been put on notice before Ext.P3 was passed. In fact, he contends that Ext.P3 was not communicated to the petitioner and copy is not given to the petitioner. He would further contend that at any rate just as a case under Rule 44 of the Co-operative Societies Rules, unless the petitioner continues to incur disqualification at the time when action is taken, it could not be said that petitioner comes under the wrath of the rule namely Rule 143(2). In other words, he would contend that admittedly

the fact remains that though his title came under the cloud for a period of two months when the administrative committee took charge on 16/01/2006 in view of his subsequent election as a member of the managing committee of the Thrissur Service Co-operative Bank on 19/03/2006, it could not be said that the petitioner continues under the shadow of the disqualification , he might have incurred on the basis of the administrative committee taking charge on 16/01/2006. Learned counsel for the petitioner relies on the decision reported in **John v. Joint Registrar of Co-op. Societies** (1996(1)KLT 479) and **Abdul Rasheed v. State of Kerala** (1988 (1)KLT 190) in support of his contentions. Per contra, learned Government Pleader would contend as follows:

She would contend that it is true that there is no notice issued to the petitioner, nor is there any opportunity given for hearing to the petitioner before Ext.P3 was issued. She raised a contention that even assuming for a moment that if the matter goes back, in her submission this is a fit case where principles of natural justice cannot be reduced to the level of an empty formality and it would be a sheer exercise of futility. To afford the petitioner an opportunity of hearing, according to her unlike a

case under Rule 44, in a situation governed by rule 143(2), whereunder the cessation of membership is the dictate of the rule itself and no act of any human agency is required to perfect the cessation which the law contemplates is meaningless. In other words, unlike a case of a disqualification under Rule 44, once facts are not in dispute that petitioner ceased to be the member of the managing committee the cessation of membership in the Co-operative union follows under the statute without any declaration by the Registrar. It is true that the petitioner has been resurrected as the member of the Thrissur Service Co-operative Bank on 19/03/2006. But it is further equally true that petitioner has not been elected to the Circle Co-operative Union on the basis of his subsequent election. This much is not in dispute. The contention of the counsel for the petitioner is that upon the petitioner being resurrected, though his title may have come under eclipse for a short period when the administrative committee was in power, his membership was resurrected by the subsequent election and consequently there cannot be any legal bar against his continuance as the member of the Circle Co-operative Union. He would submit that the law does not

contemplate a further election being held in respect of the vacancy that might have arisen consequent upon his ceasing to be a member on 16/01/2006. I did toy with the idea of remitting the matter back by way of paying obeisance to the principles of natural justice. But, in the admitted facts of this case, I am inclined to accept the contentions of the Government Pleader that it will be a sheer exercise of futility. This is for the following reason. When the administrative committee took charge on 16/01/2006, it is undisputed by the learned counsel for the petitioner that petitioner ceased to be the member of the managing committee. Rule 143(2) reads as follows:

> " *A member of the Committee of a society elected as a member of a circle Co-operative Union shall cease to hold that post if he ceases to be a member of the managing committee of the Society which he represented."*

5. The unavoidable effect of the said rule is that upon the cessation of the membership of the managing committee, the member shall cease to be a member of the Circle Co-operative Union. Thus when the petitioner ceased to be a member of the Thrissur Service Co-operative Bank on 16/01/2006 admittedly

petitioner automatically ceased to be the member of the Circle Co-operative Union.

6. Counsel for the petitioner would contend that he will continue to be a member in view of the subsequent re-election. Learned counsel for the petitioner does not dispute that if the petitioner has ceased to be the member by virtue of Rule 143(2) he ceases to be the Chairman. The fact that the petitioner came to be resurrected as the member of the Thrissur Service Co-operative Bank, in my view cannot result in any revival of the membership which he has lost by virtue of the statutory injunction. The petitioner admittedly ceased to be the member on 16/01/2006 and the committee continued under Section 33 till 19/03/2006. It is inconceivable to think that what the petitioner lost on 16/01/2006 under section 143(2) can be re-gained by him by virtue of his subsequent election to the managing committee of the Thrissur Service Co-operative Bank. Of course, when he became the member of the Service Co-operative Bank, he became qualified under Section 88 to be again to become a member of the Circle Co-operative Union. But merely by being elected to the managing committee in the election held on

19/03/2006, it is impossible to accept the contention of the petitioner that the cessation of the membership of the Circle Co-operative Union stands cancelled. Cessation in my view is irreversible by the happening of any subsequent event such as re-election to the committee as in this case and it must set in motion the process of filling up the vacancy in the manner known to law. In other words, upon a member ceasing to be the member of the managing committee under Rule 143 a clear cut vacancy arises in the body of the Circle Co-operative Union. It is precisely this which happened in the facts of this case. This is what the Joint Registrar has taken note of.

7. When the facts are not in dispute and the legal effect is clear, I find that remitting of the case back cannot produce any fruitful results at all. No mis-carriage of justice would ensue by refusal of principles of natural justice in the facts of the this case to the petitioner. I would think that the reliance placed by the learned counsel for the petitioner on certain decisions appears to be mis-placed. The decision reported in 1996 (1) KLT 479 was a case whereunder the court was considering the effect of delegates sent by the primary society to the central society

ceasing to be a member of the general body of the Central Society by the cessation of his membership in the managing committee of the primary society. The facts in which the question was decided is not the same as in the facts of this case. In 1988(1)KLT 190 this court dealt with Rule 44. That is a case where the appellant was a surety and he was not told prior to the notice that he was in default. The debt was discharged by the time action was taken and the court took the view that there is no notice to him and there is no demand from the surety also. Rule 44(3) specifically mandates that the Registrar shall issue an order after affording an opportunity of hearing to the concerned member that he ceased to be the member. Learned counsel for the petitioner submits that what is not provided for expressibly is to be implied by the court as principles of natural justice are unembodied rules evolved by the courts to supply the omission of the legislature so as to promote justice. But as I have already found principles of natural justice are not meant to be an empty formality and they need not be applied in a situation where facts would leave no manner of doubt in the courts mind that a fruitful purpose even remotely is unlikely. In such circumstances though

I find some merit in the complaint by the petitioner for action being taken belatedly and petitioner not being put on notice before Ext.P3 is issued, in the facts of this case I feel that this writ petition need not be entertained. Accordingly, writ petition is dismissed.

(K.M.JOSEPH, JUDGE)

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